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No. 08-1068

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Supreme Court of the United States

JOANNE GAGLIANO,

Petitioner,

v.

RELIANCE STANDARD
LIFE INSURANCE COMPANY,
Respondent.

**ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT**

**BRIEF OF PATIENT ADVOCATE FOUNDATION
AS AMICUS CURIAE
IN SUPPORT OF PETITIONER**

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REGULATION

29 C.F.R. § 2560.503-15

MISCELLANEOUS

Patient Advocate Foundation,
2007 Patient Data Analysis Report
(Published February 2008)2

INTEREST OF *AMICUS CURIAE*

Amicus curiae, Patient Advocate Foundation (hereinafter “amicus”) respectfully submits this brief in support of petitioner, Joanne Gagliano, encouraging the grant of a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit, because that judgment is inconsistent with the language and intent of the ERISA statute, and with sound public policy.¹

The Patient Advocate Foundation is a not for profit, Section 501(c)(3) charitable organization that assists individuals who are facing serious or life-threatening illnesses obtain access to health care. Amicus employs a staff of experienced patient navigators who respond to calls for help from individuals throughout the United States who are having difficulties obtaining access to health care under various public and private health benefit plans and programs. Patients are not charged for this service.

In 2007, Patient Advocate Foundation offered direct services to 44,812 individuals. These patients were from all fifty states and represented diversity

¹ Pursuant to Rule 37, the parties have consented to the filing of this brief, and written consents are being filed with the Clerk of Court contemporaneously with this brief. Pursuant to this Court's Rule 27.6, *amicus* represents that this brief was not authored, in whole or in part, by counsel for any party and that no party other than *amicus* has made a monetary contribution to the preparation or submission of this brief.

in age, ethnicity, geographic location and socio-economic status. Seventy eight percent of these individuals were diagnosed with cancer. Seventy seven percent of these patients were insured. A significant number of these individuals were eligible for group health benefits under ERISA employee welfare benefit plans.² The statutory definition of an "employee welfare benefit plan" includes "any plan, fund or program" that provides employees with "medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment." 29 U.S.C. § 1002(1) [emphasis added].

In this case, Petitioner Gagliano is challenging the termination of *disability* benefits by Respondent. It is important to note that group *health* benefits are governed by the same "employee welfare benefit plan" statutory provisions and regulations. The Fourth Circuit opinion therefore will have a significant impact on millions of individual welfare plan beneficiaries with health benefit claims.

Amicus regularly assists patients whose health benefits have been denied or terminated. These patients have a significant interest in the issue presented by this case: when benefits are terminated in violation of the procedures required by 29 U.S.C. § 1133 and implementing regulations, does 29 U.S.C. § 1132(a)(3) permit a court to reinstate

² Patient Advocate Foundation, *2007 Patient Data Analysis Report* (Published February 2008).

those benefits (or enjoin their termination) until they are terminated in compliance with ERISA?

SUMMARY OF THE ARGUMENT

The question presented by Petitioner in this case will have a significant impact on millions of individuals with health benefit claims under ERISA group health plans, because the statutory definition of an "employee welfare benefit plan" includes both disability benefits and health benefits. 29 U.S.C. § 1002(1). Amicus assists patients whose health benefits have been denied or terminated, and it is concerned that the Fourth Circuit's ruling could jeopardize potentially life-saving treatment for patients in situations where coverage is terminated during the course of treatment. Where health benefits are terminated by a plan administrator without complying with the patient's procedural safeguards established by 29 U.S.C. § 1133 and regulations promulgated thereunder, the patient should be allowed to have health benefits continue until the plan administrator complies with ERISA's procedural protections.

THE FOURTH CIRCUIT DECISION BELOW CONFLICTS WITH THE THIRD, SIXTH, SEVENTH, AND NINTH CIRCUITS.

REASONS FOR GRANTING THE WRIT

I. THE QUESTION PRESENTED IS EXTREMELY IMPORTANT

All individuals receiving health benefits under employee welfare benefit plans have an interest in the question presented by this case. If health benefit coverage is terminated improperly during the course of treatment, their health could be put at risk. Indeed, their lives could be at risk.

Amicus is concerned that the Fourth Circuit's ruling could jeopardize potentially life-saving treatment for patients in situations where coverage is terminated during the course of treatment. As an example, many patients need extended hospitalization for various forms of medical or psychiatric treatment. Imagine a patient who has been admitted for inpatient treatment. The admission has been approved by the health plan administrator, so treatment begins. If, however, the plan then decides to terminate coverage while the patient is hospitalized, the patient's health is put at risk at a time when the patient is least able to challenge the denial.

Using Petitioner Gagliano's case as an example, if the health treatment coverage is terminated because, following hospital admission, the plan determines that the claim should not have

been approved because of a pre-existing condition, and if the plan then refuses to pay for further care without notifying the patient of a denial in a manner that complies 29 U.S.C. § 1133 and procedural regulations at 29 C.F.R. § 2560.503-1, the patient then faces substantial risk. Where health benefits are terminated by a plan administrator without complying with the patient's procedural safeguards, the patient should be allowed to have health benefits continue to be paid until the plan administrator complies with ERISA's procedural protections. As the Fourth Circuit has noted, "These procedural guidelines are at the foundation of ERISA." *Weaver v. Phoenix Home Life Mut. Ins. Co.*, 990 F.2d 154, 157 (CA4 1993).

II. THE CIRCUITS ARE DIVIDED OVER THE QUESTION PRESENTED

As noted by Petitioner, the Fourth Circuit decision below conflicts with the Third, Sixth, Seventh, and Ninth Circuits. The Fourth Circuit expressly acknowledged that it was creating a circuit split. Pet. App. 22a ("The district court's reliance on the Sixth Circuit's decision in *Wenner*³ was misplaced, both because it is contrary to the law of this circuit and because that decision's rationale is flawed."). In *Wenner*, the Sixth Circuit held that a court may reinstate benefits that have been terminated in violation of 29 U.S.C. § 1133.

³ *Wenner v. Sun Life Assurance Co.*, 482 F.3d 878, 883 (CA6 2007).

The Sixth Circuit holding in *Wenner* is consistent with the Seventh Circuit holding in *Schneider v. Sentry Group Long Term Disability Plan*, 422 F.3d 621 (CA7 2005); the Third Circuit holding in *Grossmuller v. Int'l. Union et al.*, 715 F.2d 853 (CA3 1983); and the Ninth Circuit holding in *Pannebecker v. Liberty Life Assurance Co.*, 542 F.3d 1213, 1221 (CA9 2008).

CONCLUSION

For the reasons discussed above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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